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SUBJECT: COUNTER-TERRORISM/LAW ENFORCEMENT: EU  
BEGINS WORK ON AIRLINE PASSENGER DATA SYSTEM

REF: (A) USEU BRUSSELS 1338;

(B) USEU BRUSSELS 743

SUMMARY

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1. The EU Council of Justice and Home Affairs (JHA) Ministers on March 30 displayed a new momentum to meet its obligations to deal with the Declaration by EU leaders on combating terrorism as well as its own rolling agenda. The ministers agreed on a "general approach" (no formal agreement yet) on a Directive aimed at improving border controls and combating illegal immigration by the transmission of advance passenger data by air carriers to border authorities. They did the same (pending scrutiny by national parliaments) for a Directive to ensure fair and appropriate compensation to victims of a crime, including a terrorist attack, suffered in a Member State other than their own. Newly appointed CT Coordinator de Vries said his role would be to assist Member States to deliver on their commitments. Full text of the JHA Conclusions has been transmitted to EUR/ERA and Embassy Dublin. Migration issues covered septel. END SUMMARY.

EUROPEAN COUNCIL DECLARATION ON TERRORISM: FOLLOW-UP

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2. With newly appointed CT Coordinator Gijs de Vries in attendance, the Council discussed the follow-up to the Declaration on Combating Terrorism adopted by the European Council on March 25 (REF A). Following a separate bilateral meeting with Council Secretary-General/HighRep Solana, de Vries told

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reporters his role would be "to assist Member States in doing the things they have said they would do, i.e. to deliver on commitments." De Vries made it clear he was "not in the business of creating a new institution or a new bureaucracy." Irish Justice Minister/Council chair Mc Dowell reported a "great sense of confidence" in de Vries, whom he presented as "a man of huge experience and intelligence capacity, who is only interested in the outcome and not in Empire-building."

OBLIGATION OF CARRIERS TO COMMUNICATE PASSENGER DATA

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3. Meeting in a Mixed Committee with Iceland and Norway in the context of the Schengen arrangements, EU JHA ministers reached a "common approach" (not a formal agreement yet) on a draft Directive aimed at improving border controls and combating illegal immigration by the transmission of advance passenger data by air carriers to border authorities. The draft lays down obligations for carriers transporting non-EU nationals into the territory of the Member States. In order to ensure greater effectiveness of this objective, it provides for financial penalties when carriers fail to meet their obligations. Minister Mc Dowell noted that the importance of sharing passenger data was underlined by last week's European Council Declaration on Combating Terrorism. The Declaration tasked the Commission to bring forward a proposal, no later than June 2004, for a common EU approach to the use of passenger data for border and aviation security and other law enforcement purposes. Mc Dowell said the Directive would be reviewed in light of the Commission's proposal.

4. Mc Dowell commented that the Madrid bombings had triggered a "more mature judgment" by EU governments on access to personal data, adding: "Post-Madrid, the European Parliament may have a rethink about whether privacy is such an absolute right. I don't

think the people of Europe would forgive us if information that could prevent such an atrocity were contained in files or records and could simply not be accessed by the people who could prevent such atrocities." UK Home Office Minister for Organized crime reduction and European issues Caroline Flint said: "It is right we make the most of information collected at our borders by making available to immigration authorities and law enforcement agencies across the EU. We should maximize our use of information, including from the proposed new range of biometric visas and passports, to ensure that legitimate passengers can move freely, while safeguarding our borders, not only against illegal immigration, but against serious and organized crime and terrorism."

#### COMPENSATION TO CRIME VICTIMS -----

15. Mc Dowell also announced a consensus on a Council Directive on compensation to crime victims, for the adoption of which the March 25-26 European Council set a May 1, 2004 deadline. The proposal is part of the EU's response to 9/11 and the Madrid attacks and ensures that victims of crime (including terrorist attacks) receive "adequate compensation regardless of where within the EU such acts take place," according to the Council conclusions. The deal, which is based on a Presidency compromise intended to prevent a deadlock on the issue of the legal basis for the Directive, remains subject to scrutiny by parliaments in the UK and Germany. However, Mc Dowell was hopeful for a formal agreement at the April 29-30 JHA Council. He said the Directive would contain rules on access to compensation in cross-border cases that will help victims claim compensation as a result of a crime suffered in a member state other than their own. All Member States will also have to ensure that their national rules provide, by July 1, 2005, for the existence of a scheme guaranteeing fair and appropriate compensation for victims.

#### MUTUAL RECOGNITION OF CONFISCATION ORDERS -----

16. Mc Dowell reported "significant progress" but no complete agreement yet on a draft piece of legislation intended to facilitate cooperation between Member States as regards the recognition and execution of orders to confiscate the proceeds of crime (REF.B). By means of the Framework Decision, a Member State will have to recognize and execute in its territory confiscation orders issued by judicial authorities of another Member State. Discussions in the Council focused on the grounds for non-recognition or non-execution of a confiscation order. According to the draft text, the executing state may refuse the recognition/execution confiscation order when the offences have been committed wholly or partly within the territory of the executing state. A number of delegations and the Commission think this provision should be limited in order to avoid the risk that criminals go unpunished as a consequence of its application. Mc Dowell was confident that the Council will be able to meet the June 2004 target set by the March 25 European Council Declaration for adoption of this draft.

#### APPOINTMENT OF EUROPOL DIRECTOR -----

17. The term of office of the current (German) Director of Europol expires on June 30, 2004. EU sources said the incumbent wishes to continue but Italy and France have put forward their own candidates. Ministers held an initial inconclusive discussion over lunch.

#### COMMENT -----

18. As highlighted by the Ministers' comments, we see the EU's passenger data initiative as helpful in terms of potentially re-enforcing our arguments about the value of this kind of passenger name record data. More generally, the new momentum displayed at the March 30 JHA Council owes much to the post-Madrid atmosphere of "seriousness" observed in EU corridors, but is also due to the fact that ministers are coming up against deadlines for the adoption of a series of measures. The Irish Presidency and Coordinator de Vries must now use the timeframe created in the Declaration on Combating

Terrorism to impose a new sense of urgency on the EU governments.

FOSTER